(4)

No. 91 - 571

FILED
JAN 13 1992
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

ROBERT J. TAYLOR, Trustee,

Petitioner,

v.

FREELAND & KRONZ, a Partnership; WENDELL G. FREELAND; and RICHARD F. KRONZ,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Curcuit

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

I. United States Bankruptcy Court for the Western District of Pennsylvania

1.	October 4, 1988	–	Complaint filed
2.	November 23, 1988	–	Answer of Freeland, Kronz, and Freeland & Kronz to Complaint filed
3.	November 23, 1988	–	Response and New Matter of Emily Davis to Complaint filed
4.	June 20, 1989	–	Plaintiff's Pretrial Statement filed
5.	June 23, 1989	–	Defendant Emily Davis' Pretrial Statement filed
6.	June 26, 1989	–	Defendants Freeland, Kronz, and Freeland & Kronz's Pretrial Statement filed
7.	June 28, 1989	–	Defendant Freeland & Kronz's Motion for Summary Judgment filed
8.	June 29, 1989	–	Combined Pretrial Statement of the Parties filed
9.	July 3, 1989	–	Response in Opposition to Motion for Summary Judgment filed
10.	July 5, 1989	–	Trial
11.	September 7, 1989	–	Memo Opinion and Order filed
12.	September 15, 1989	–	Notice of Appeal filed

II. United States District Court for the Western District of Pennsylvania

1. September 7, 1989 – Memorandum Opinion affirming Judgment of Bankruptcy Court filed
2. October 3, 1989 – Notice of Appeal filed

III. United States Court of Appeals for the Third Circuit

1. July 8, 1991 – Opinion filed

IV. United States Supreme Court

1. November 27, 1991 – Petition for Writ of Certiorari granted

PITTSBURGH COMMISSION ON HUMAN RELATIONS
Pittsburgh, PA

EMILY E. DAVIS WINN,	)	
	)	
Complainant	)	
	)	
vs.	)	FEP B-262
	)	
TRANS WORLD AIRLINES, INC.,	)	
	)	
Respondent	)	

ORDER

AND NOW, this 16th day of December, 1980, it is hereby ordered that Respondent, Trans World Airlines, Inc. cease and desist from discriminating against any of its employees on the basis of their sex or race,

AND FURTHER, that the Respondent immediately pay to the Complainant, Emily E. Davis Winn, lost wages representing the difference between her salary as a Reservations Sales Representative and the salary of a Senior Sales Representative, the position she was denied because of unlawful discrimination from the period March, 1976 until the date TWA no longer employed Senior Sales Representatives in its Pittsburgh office.

Respondent is to submit information to the Commission for the calculation of lost wages, including but not limited to, Winn's wages from 1976 and the wages of Senior Sales Representatives in the Pittsburgh area from 1976.

Hearing Commissioners Bingler and Silverman concur in this Decision and Order.

BY THE COMMISSION:

By: /s/ Marsha Bingler
Marsha Bingler, Chairperson

UNITED STATES BANKRUPTCY COURT

for the Western District of Pennsylvania

IN RE EMILY E. DAVIS a/k/a)
EMILY E. WINN,) Case No. _____

Debtor [include here all names used by Debtor within last 6 years]

SCHEDULE A. - STATEMENT OF ALL LIABILITIES OF DEBTOR

Schedules A-1, A-2 and A-3 must include all the claims against the debtor or his property as of the date of the filing of the petition by or against him.

SCHEDULE A-1. - CREDITORS HAVING PRIORITY

(1) Nature of Claim	(2) Name of creditor and complete mailing address including zip code (if unknown, so state)	(3) Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, or subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	(4) Indicate if claim is contingent, unliquidated or disputed	(5) Amount of claim	
				$	Cts.
(a) Wages, salary, and commissions, including vacation, severance and sick leave pay owing to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part					

SCHEDULE A-1. - CREDITORS HAVING PRIORITY

(1) Nature of Claim	(2) Name of creditor and complete mailing address including zip code (if unknown, so state)	(3) Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, or subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	(4) Indicate if claim is contingent, unliquidated or disputed	(5) Amount of claim
time, whether or not selling exclusively for the debtor, not exceeding $2,000 to each, earned within 90 days before filing of petition or cessation of business, if earlier (specify date).				0 00
(b) Contributions to employee benefit plans for services rendered within 180 days before filing of petition or cessation of business if earlier (specify date).				0 00

(c) Deposits by individuals, not exceeding $900 for each for purchase, lease, or rental of property or services for personal, family, or household use that were not delivered or provided.	0	00
(d) Taxes Owing [itemize by type of tax and taxing authority]		
(1) To the United States	200	78
(2) To any state	0	00
(3) To any other taxing authority	0	00
Total	200	78

UNITED STATES BANKRUPTCY COURT

for the Western District of Pennsylvania

IN RE EMILY E. DAVIS a/k/a)
EMILY E. WINN,)

Case No. _____

Debtor [include here all names used by Debtor within last 6 years]

SCHEDULE A-2. - CREDITORS HOLDING SECURITY

(1) Name of creditor and complete mailing address including zip code [if unknown, so state]	(2) Description of security and date when obtained by creditor	(3) Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed or subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	(4) Indicate if claim is contingent, unliquidated or disputed.	(5) Market Value		(6) Amount of claim without deduction of value of security	
				$	Cts.	$	Cts.
N/A				0	00	0	00
Total				0	00	0	00

∞

UNITED STATES BANKRUPTCY COURT

for the Western District of Pennsylvania

IN RE EMILY E. DAVIS a/k/a)
EMILY E. WINN,)

Case No. _____

Debtor [include here all names used by Debtor within last 6 years]

SCHEDULE A-3. - CREDITORS HAVING UNSECURED CLAIMS WITHOUT PRIORITY

Name of creditor [including last known holder of any negotiable instrument] complete mailing address including zip code [if unknown, so state]	Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	Amount of claim $	Cts.
Amoco Oil Co. PO Box 9014 Des Moines, IA 50306	Merchandise & services - liquidated and undisputed	1,049	76
Firestone Tire & Rubber Co PO Box 81344 Cleveland, OH 44188	Merchandise & services - liquidated and undisputed	80	13
Gimbels 339 Sixth Ave Pittsburgh, PA 15284	Merchandise - liquidated and undisputed	340	76

Name of creditor [including last known holder of any negotiable instrument] complete mailing address including zip code [if unknown, so state]	Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	Amount of claim	
Herman Gordon, D.D.S. Chatham Center Prof'l, Suite 1D Pittsburgh, PA 15219	Services - liquidated and undisputed	186	00
Joseph Horne's Credit Dept Pittsburgh, PA 15285	Merchandise - liquidated and undisputed	317	95
Kaufmann's PO Box 1118 Pittsburgh, PA 15230	Merchandise - liquidated and undisputed	301	80
Mellon Bank c/o Charge Services PO Box 371322M Pittsburgh, PA 15250	Merchandise, services and money loaned on MasterCard - liquidated and undisputed	4,673	24
Northwest Financial 5519 Walnut St Pittsburgh, PA 15232	Money loaned - liquidated and undisputed	2,640	00
Total		9,589	64

UNITED STATES BANKRUPTCY COURT

for the Western District of Pennsylvania

IN RE EMILY E. DAVIS a/k/a)
EMILY E. WINN,)
Debtor

Case No. _____

SCHEDULE A-3. - CREDITORS HAVING UNSECURED CLAIMS WITHOUT PRIORITY

Creditor	Specifications	Amount $	Amount Cts.
JC Penney 7 Parkway Center Pittsburgh, PA 15262	Merchandise - liquidated and undisputed	109	86
People's Natural Gas Co 1201 Pitt St Pittsburgh, PA 15221	Services - liuqidated & undisputed	257	19
Sewickley Valley Hosp Blackburn Road Sewickley, PA 15143	Services - liquidated and undisputed	53	25
US Air Fed'l Credit Union; Grtr Pgh Airport Pittsburgh, PA 15231	Money loaned - liquidated and undisputed	500	00
Wickes Furniture Monroeville, PA 15146	Merchandise - liquidated and undisputed	559	65
Total		11,069	59

UNITED STATES BANKRUPTCY COURT

for the Western District of Pennsylvania

IN RE EMILY E. DAVIS a/k/a)
EMILY E. WINN,) Case No. _____

Debtor [include here all names used by Debtor within last 6 years]

SCHEDULE B. - STATEMENT OF ALL PROPERTY OF DEBTOR

Schedules B-1, B-2, B-3 and B-4 must include all property of the debtor as of the date of the filing of the petition by or against him.

SCHEDULE B-1. - REAL PROPERTY

Description and location of all real property in which debtor has an interest [including equitable and future interests, interests in estates by the entirety, community property, life estates, leaseholds, and rights and powers reversible for his own benefit]	Nature of interest [specify all deeds and written instruments relating thereto]	Market value of debtor's interest without deduction for secured claims listed in Schedule A-2 or exemptions claimed in Schedule B-4	
		$	Cts.
N/A		0	00
Total		0	00

UNITED STATES BANKRUPTCY COURT

for the Western District of Pennsylvania

IN RE EMILY E. DAVIS a/k/a)
EMILY E. WINN,) Case No. _____

Debtor [include here all names used by Debtor within last 6 years]

SCHEDULE B-2. - PERSONAL PROPERTY

Type of Property	Description and Location	Market value of debtor's interest without deduction for secured claims listed on Schedule A-2 or exemptions claimed in Schedule B-4	
		$	Cts.
a. Cash on hand		100	00
b. Deposits of money with banking institutions, savings and loan associations, credit unions, public utility companies, landlords and others		100	00
c. Household goods, supplies, and furnishings		750	00
d. Books, pictures and other art objects; stamp, coin and other collecions		0	00
e. Wearing apparel, jewelry, firearms, sports equipment, and other personal possessions		500	00

SCHEDULE B-2. - PERSONAL PROPERTY

Type of Property	Description and Location	Market value of debtor's interest without deduction for secured claims listed on Schedule A-2 or exemptions claimed in Schedule B-4	
f. Automobiles, trucks, trailers and other vehicles	1976 Plymouth	300	00
g. Boats, motors, and their accessories		0	00
h. Livestock, poultry, and other animals		0	00
i. Farming supplies and implements		0	00
j. Office equipment, furnishings, and supplies		0	00
k. Machinery, fixtures, equipment, and supplies (other than those listed in items j. and i.) used in business		0	00
l. Inventory		0	00
m. Tangible personal property of any other description		0	00
n. Patents, copyrights, franchises, and other general intangibles (specify all documents and writings relating thereto)		0	00

o. Government and corporate bonds and other negotiable and non-negotiable instruments		0	00
p. Other liquidated debts owing debtor		0	00
q. Contingent and unliquidated claims of every nature, including counterclaims of the debtor (give estimated value of each)		0	00
r. Interests in insurance policies (itemize surrender or refund values of each)		0	00
s. Annuities		0	00
t. Stock and interests in incorporated and unincorporated companies (itemize separately)		0	00
u. Interests in partnerships		0	00
v. Equitable and future interests. Life estates and rights or powers excercisable for the benefit of the debtor (other than those listed in Schedule B1) (specify all written instruments relating thereto)	Proceeds from lawsuit - Winn v. TWA, if any	unknown	
Total		1750	00

UNITED STATES BANKRUPTCY COURT

for the Western District of Pennsylvania

IN EMILY E. DAVIS a/k/a)
EMILY E. WINN,) Case No. _____

Debtor [include here all names used by Debtor within last 6 years]

SCHEDULE B-3. - PROPERTY NOT OTHERWISE SCHEDULED

Type of Property	Description and Location	Market value of debtor's interest without deduction for secured claims listed on Schedule A-2 or exemptions claimed in Schedule B-4	
		$	Cts.
a. Property transferred under assignment for benefit of creditors within 120 days prior to filing of petition (specify date of assignment, name and address of assignee, amount realized therefrom by the assignee, and disposition of proceeds so far as known to debtor).		0	00
b. Property of any kind not otherwise scheduled.		0	00
Total		0	00

UNITED STATES BANKRUPTCY COURT

for the Western District of Pennsylvania

IN RE EMILY E. DAVIS a/k/a)
EMILY E. WINN,) Case No. _____

Debtor [include here all names used by Debtor within last 6 years]

Debtor selects the following property as exempt pursuant to 11 U.S.C. §§: 522(d) [or the laws of the State of _____]

SCHEDULE B-4. - PROPERTY CLAIMED AS EXEMPT

Type of Property	Location, description, and, so far as relevant to the claim of exemption, present use of property	Specify statute creating the exemption	Value Claimed Exempt $	Cts.
Cash on hand		11 U.S.C. 522(d)	100	00
Checking account -	Mellon Bank	11 U.S.C. 522(d)	100	00
Household goods and furnishings;	1720 Pierce Street Aliquippa, PA 15001	11 U.S.C. 522(d)	750	00
Wearing apparel and jewelry;	1720 Pierce Street Aliquippa, PA 15001	11 U.S.C. 522(d)	500	00
1976 Plymouth;	1720 Pierce Street Aliquippa, PA 15001	11 U.S.C. 522(d)	300	00

SCHEDULE B-4. - PROPERTY CLAIMED AS EXEMPT

Type of Property	Location, description, and, so far as relevant to the claim of exemption, present use of property	Specify statute creating the exemption	Value Claimed Exempt	
			$	Cts.
Proceeds from lawsuit -	Winn v. TWA Claim for lost wages	11 U.S.C. 522(b)(d)	unknown	
Total			1750	00

UNITED STATES BANKRUPTCY COURT

for the Western District of Pennsylvania

IN RE EMILY E. DAVIS a/k/a)
EMILY E. WINN,)

Case No. _____

Debtor [include here all names used by Debtor within last 6 years]

UNSWORN DECLARATION UNDER PENALTY OF PERJURY OF INDIVIDUAL TO SCHEDULES A AND B

I, EMILY E. DAVIS a/k/a EMILY E. WINN, certify under penalty of perjury that I have read the foregoing schedules consisting of _____, sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Executed on Oct. 24, 1984

Signature /s/ Emily E. Davis a/k/a Emily E. Winn

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UNSWORN DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP TO SCHEDULES A AND B

I, _____, [the president or other officer or authorized agent of the corporation] [or a member or an authorized agent of the partnership] named as debtor in this case, certify under penalty of perjury that I have read the foregoing schedules, consisting of _____ sheets and that they are true and correct to the best of my knowledge, information and belief.

Executed on _____

Signature _____

UNITED STATES BANKRUPTCY COURT

for the Western District of Pennsylvania

IN RE EMILY E. DAVIS a/k/a)
EMILY E. WINN,) Case No. _____

Debtor [include here all names used by Debtor within last 6 years]

SUMMARY OF DEBTS AND PROPERTY

[From the statements of the debtor in Schedules A and B]

Schedule		Total
A-1/a.b	Wages, etc. having priority	0.00
A-1(c)	Deposits of money	0.00
A-1/d(1)	Taxes owing United States	200.78
A-1/d(2)	Taxes owing states	0.00
A-1/d(3)	Taxes owing other taxing authorities	0.00
A-2	Secured claims	0.00
A-3	Unsecured claims without priority	11,069.59
	SCHEDULE A TOTAL	
	PROPERTY	11,270.37
B-1	Real property (total value)	0.00

B-2/a	Cash on hand	100.00
B-2/b	Deposits	100.00
B-2/c	Household goods	750.00
B-2/d	Books, pictures, and collections	0.00
B-2/e	Wearing apparel and personal possessions	500.00
B-2/f	Automobiles and other vehicles	300.00
B-2/g	Boats, motors, and accessories	0.00
B-2/h	Livestock and other animals	0.00
B-2/i	Farming supplies and implements	0.00
B-2/j	Office equipment and supplies	0.00
B-2/k	Machinery, equipment, and supplies used in business	0.00
B-2/l	Inventory	0.00
B-2/m	Other tangible personal property	0.00
B-2/n	Patents and other general intangibles	0.00
B-2/o	Bonds and other intruments	0.00
B-2/p	Other liquidated debts	0.00
B-2/q	Contingent and unliquidated claims	0.00
B-2/r	Interests in insurance policies	0.00
B-2/s	Annuities	0.00
B-2/t	Interests in corporations and unincorporated companies	0.00
B-2/u	Interests in partnerships	0.00
B-2/v	Equitable and future interests, rights, and powers in personality	unknown
B-3/a	Property assigned for benefit of creditors	0.00
B-3/b	Property not otherwise scheduled	0.00
	SCHEDULE B TOTAL	1,750.00

[J#40-84]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

EMILY E. DAVIS WINN,	: No. 79 W.D. Appeal Docket, 1983
Appellee	: Appeal from the June 27, 1983 of the Commonwealth Court at No. 2651 C.D. 1981, reversing the Order of the Court of Common Pleas, Civil Division, of Allegheny County at No. S.A. 5 of 1981, dated September 23, 1981.
v.	
TRANS WORLD AIRLINES, INC.,	
Appellant	: 75 Pa. Commonwealth Ct. 366, 462 A.2d 301 (1983).
	: ARGUED: March 6, 1984

ORDER

PER CURIAM FILED: NOVEMBER 29, 1984

The Court being equally divided, the Order of the Commonwealth Court is affirmed.

MR. JUSTICE PAPADAKOS did not participate in the consideration or the decision of this matter.

MR. CHIEF JUSTICE NIX files an Opinion in Support of Affirmance in which MR. JUSTICE LARSEN joins.

MR. JUSTICE LARSEN files an Opinion in Support of Affirmance in which MR. CHIEF JUSTICE NIX joins.

MR. JUSTICE HUTCHINSON files an Opinion in Support of Affirmance.

MR. JUSTICE FLAHERTY files an Opinion in Support of Reversal in which MR. JUSTICE McDERMOTT and MR. JUSTICE ZAPPALA join.

[J#40-84]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

EMILY E. DAVIS WINN,	: No. 79 W.D. Appeal Docket, 1983
Appellee	: Appeal from the June 27, 1983 of the Commonwealth Court at No. 2651 C.D. 1981, reversing the Order
v.	: of the Court of Common Pleas, Civil Division, of Allegheny County at
TRANS WORLD AIRLINES, INC.,	: No. S.A. 5 of 1981, dated September 23, 1981.
Appellant	: 75 Pa. Commonwealth Ct. 366, 462 A.2d 301 (1983).
	: ARGUED: March 6, 1984

OPINION IN SUPPORT OF AFFIRMANCE

HUTCHINSON, J. FILED: NOVEMBER 29, 1984

On the particular facts of this case I believe the evidence is sufficient, albeit barely, to support the Pittsburgh Human Relations Commission's findings of discrimination in three of the five matters of which appellee complained. I therefore believe Commonwealth Court must be affirmed. However, because the precedential value of this case is limited to its facts, I would dismiss the appeal as improvidently granted.

PROCEEDING MEMO - §341 MEETING

DATE: Jan. 4, 1985 9:00 a.m.

TITLE: In re: Emily E. Davis
Emily Winn ss# 208-32-8179
Case No.: 84-2291

1. Disclosure statement filed by attorney for debtor pursuant to 11 U.S.C. §329 and FRBP 219(b)-

___ Yes
___ No

2. Trustee - ___ Interim trustee continued
___ Trustee elected by creditors
___ Name of trustee:

3. Trustee election disputed ___ Yes
___ No

[Interim Bankruptcy Rule 2003: *If an election is disputed, the presiding officer shall promptly inform the court in writing of the dispute. Pending disposition of the dispute by the court, the interim trustee shall continue in office.*]

4. If trustee election disputed, were parties to the dispute advised by the presiding officer of the 10 day time limitation for application to the court?

___ Yes ___ No

5. Creditors' committee elected pursuant to 11 U.S.C. §705

___ Yes ___ No

[*If a creditor's committee was elected, attach the list of membership*]

6. Debtor examined by- ___ Creditor(s) ___ Indenture trustee ___ Trustee or Examiner

7. Should claims be filed? ___ Yes ___ No

8. Meeting adjourned to , 19 , .m.

Notes of Presiding Officer (Handwritten notes)

Alan Berman & Debtor Appeared

Creditors Appeared 1. (illegible) Dave Wahland, Northwest Financial, 5519 Walnut St., Pittsburgh, Pa 15232, 621-9200.

1. No 1984 income tax refund - she'll owe money
2. No real estate
3. 1976 Plymouth - $300.00 value
4. Pending lawsuit with TWA - possible claim $90,000.00. On appeal to Pa. Supreme Court Possible asset case

/s/ Robert J. Taylor
Presiding Officer

Robert J. Taylor
Attorney at Law
337 Merchant Street
Ambridge, Pennsylvania 15003

(412) 266-2370

January 7, 1985

Richard F. Kronz, Esq.
Wendell Freeland, Esq.
1111 Manor Building
564 Forbes Avenue
Pittsburgh, PA 15219

In Re: Emily E. Davis, a/k/a Emily E. Winn v. TWA
Bankruptcy No. 84-2291

Dear Mr. Kronz and Mr. Freeland:

I am the appointed Trustee in the bankruptcy of Emily E. Davis, a/k/a Emily E. Winn at No. 84-2291.

At the interim Trustee hearing which was held January 4, 1985, she and her attorney, Alan Berman, advised that you were handling her suit against TWA.

Kindly supply the details of the suit, the possibility of settlement and what the approximate amount the settlement would be. As you are aware, the net proceeds of said suit would be an asset in the bankruptcy estate. Please advise the details.

Very truly yours,

Robert J. Taylor

Freeland & Kronz
Attorneys at Law
Eleven-Eleven Manor Building
Pittsburgh, Pennsylvania 15219
(412) 471-5287

January 9, 1985

Robert J. Taylor, Esquire
337 Merchant Street
Ambridge, Pennsylvania 15003

Re: Emily E. Davis vs. TWA

Dear Mr. Taylor:

In November, 1984, a split Supreme Court affirmed the decision of the Commonwealth Court which resulted in a final adjudication on the liability aspect of the charge initially brought with the Pittsburgh Commission on Human Relations. The damages or the back pay aspect of this case has never been tried because TWA took its appeal before the Commission had the opportunity to review relevant wage records. Therefore, there is no way of ascertaining the value of the case to Ms. Winn other than by calculating the back pay together with prejudgment interest, since the date of her layoff.

We have calculated the back pay and interest at approximately $110,000.00. However, while we are guardedly optimistic that the case can be settled on the basis of a mutually agreeable formula, we expect that we will have to go back before the Commission to try the damages to conclusion. In this regard, we have requested the Commission to reconvene the proceedings and we are preparing to try this aspect of the case.

Because we expect TWA to vigorously defend the back pay issue and because of the slowness of the process at the Commission level and because of other variables and

uncertainties, the possibility of a quick settlement is unlikely. Furthermore, we do not expect that Ms. Winn will receive any money, whether by settlement or by verdict, in the year 1985.

I hope this letter has been of some help to you. If I may be of any further assistance, please feel free to call.

Very truly yours,

/s/John A. Meyer
John A. Meyer

Freeland & Kronz
Attorneys at Law
Eleven-Eleven Manor Building
Pittsburgh, Pennsylvania 15219
(412) 471-5287

Wendell G. Freeland
Richard F. Kronz

Craig A. McClean
Margaret M. Hock

May 12, 1987

James A. Mollica, Jr., Esq.
MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK
2000 Frick Building
Pittsburgh, Pennsylvania 15219

Dear Jim:

RE: Davis v. TWA

Per your request, we are submitting a revised work up of the damages sustained by Winn-Davis.

In making our calculations, we used information contained in the materials we sent you and you sent us. In computing back pay, we used Winn-Davis's actual earnings for all years through 1986. Where the earnings figure differs from the figure you used in your computations, we have a footnote explaining the error. Our back pay component is calculated through June 30, 1987, anticipating that it may take an additional forty-five days for a "final resolution" of this case.

In calculating the front pay component, we used 1986 actual earnings for Winn-Davis and the TWA employees, Carey and Teets. We included a front pay claim for three years from June 30, 1987.

The following is our calculation of the wage loss components:

BACK PAY

	Winn-Davis's Earnings	Sr. Sales Rep. and/or Acct. Mgrs.		Back Pay	Back Pay W/Int. 6% Per Yr.
1976	13,486(1a)			0	
1977	14,801	Carey/ Teets	16,169	1,368	$ 2,380
1978	16,367	Teets/ Thomas	18,102	3,103	5,092
1979	18,565	Teets/ Thomas	21,159	2,594	4,016
1980	23,100	Teets/ Thomas	24,664	4,158	6,073
1981	7,779	Teets/ Thomas	28,012	20,233	27,877
1982	17,057	Teets	30,749	13,692	17,797
1983	20,885	Teets	32,079	11,194	13,726
1984	14,928(1b)	Teets	31,632	16,704	19,323
1985	19,997(1c)	Carey/ Teets	40,873	20,876	22,783
1986	25,774(2)	Carey/ Teets	36,406(3)	10,632	10,946
1987 (6 Mo.)	12,887(4)		18,203	5,316	5,316
Total Back Pay:					$ 135,329

FRONT PAY

7/1/87-6/30/88 (5)	25,774	Carey/ Teets	36,406	10,632	
7/1/88-6/1/89	25,774		36,406	10,632	
7/1/89-6/1/90	25,774		36,406	10,632	
Total Front Pay:					31,896
Total Wage Loss Components:					$ 167,225

Footnote (1): TWA Schedule "A" Winn-Davis Earnings adjusted as follows:

(1a): Reduced by $615 - Income Earned by Ulysses Winn.

(1b): Reduced by $3,546 - Unemployment Benefits.

(1c): Reduced by $630 - Unemployment Benefits.

Footnote (2): Excludes $1,084 Moving Expense Reimbursement included on W-2

Footnote (3): Assumes a % Reduction in earnings for Carey & Teets equal to %reduction in Teets' earnings from previous years. Carey earnings included because he resumed employment as Account Manager.

Footnote (4): Estimated at 50% of 1986.

Footnote (5): Wage Differentials are based on 1986 Data.

The other item or damages which must be considered is the loss in pension benefits which Winn-Davis has suffered by virtue of your client's discriminatory practices. To compute the pension benefits and the loss of benefits, we utilized the following general information:

1. Date of Birth: January 27, 1943.

2. Date of Normal Retirement: January 27, 2008.

3. Life Expectancy: 81.6 years.

4. Retirement Life Expectancy: 16.6 years.

To compute the pension benefits due Winn-Davis under the TWA pension plan, we utilized the wage and other information which you provided and the following facts:

TWA

1. Retirement Plan for Noncontract Personnel of Trans World Airlines, Inc. (As Amended Effective Jan. 1, 1979) is the current applicable pension plan;

2. No 2% payments were made pursuant to Article 8 thereof;

3. Earnings are assumed to be those annual rates utilized for the computation of front and back pay;

4. As no information is available with respect to the annual amount credited to Winn-Davis as of June 30, 1978 for purposes of computation of the annual 1978 Past Service Retirement Income, the figure derived pursuant to Article 4.3(B) is assumed to be greater than that assigned to Winn-Davis pursuant to Article 4.3(A);

5. In computing the Annual Future Service Retirement Income, wages exceed the Social Security taxable wage base only in 1978 and 1985;

6. The Social Security taxable wage base is $17,700 and $39,600 for 1978 and 1985 respectively;

7. Date of Hire: March 1, 1967;

8. Last Day Worked: June 30, 1990; and

9. Furlough: December, 1969 through April, 1972.

To compute the pension benefits due Winn-Davis under the Bristol-Myers Pension Plan, we utilized the actual earnings of

Winn-Davis from her hired date through December 31, 1986 and the following facts:

BRISTOL-MYERS

1. Date of Hire: March 25, 1985;

2. Last Day Worked: June 30, 1990;

3. Earnings are assumed to be $25,774 annually, except for 1985 with Winn received $15,910 from Bristol-Myers;

4. Primary Social Security benefits are assumed to be those which would be payable under the current law based on current earnings.

5. Final average pay is assumed to be $25,774;

6. Number of years of service is assumed to be 6; and

7. Bristol-Myers Company Retirement Income Plan (revised 7/84) is the current applicable pension plan.

Based on the above, we compute the pension benefits which are due Winn-Davis under the TWA plan as follows:

TWA PENSION ANALYSIS

A. ANNUAL FUTURE SERVICE RETIREMENT INCOME

Aggregate of applicable TWA wages from 7/1/78 through 6/30/90	$380,572	
Contractual rate	X .015	
		5,709

B. ANNUAL PAST SERVICE RETIREMENT INCOME

1% of first $10,000 of 1977 annual income	100	
1.75% of remainder of 1977 annual income	108	
	208	
Multiplied by years of credited service prior to 7/1/78	9.08333	
		1,889
C. ANNUAL PENSION BENEFIT		7,598

We compute the pension benefits to Winn-Davis under the Bristol-Myers Pension Plan as follows:

ANNUAL PENSION BENEFIT

Final average pay	$ 25,774	
Multiplied by the product of 1.75% and 6 yrs. service	x .105	
	$ 2,706	2,706

Less Credit for Primary S.S. Benefits (1/70 of Primary S.S. Benefit for each year of service. Primary S.S. Benefit based on annual credited earnings of $25,774 = $758.90 month.

Annual S.S. Benefits = 12 x 758.90 =	9,106.80	
Multiple based on years of service 6/70	x 8.5714	
Deduction from Annual Pension	58.780	781
Net annual Pension Based on Bristol-Myers Earning through 6/30/90		1,925

Based on the above, we compute the loss of pension benefits as follows:

LOSS OF PENSION BENEFITS

TWA annual pension benefit	$ 7,598	
Bristol-Myers annual pension benefit	1,925	
Annual Loss of Pension Benefit	$ 5,673	
Multiplied by Retirement Life Expectancy	x 16.6	
TOTAL LOSS OF PENSION BENEFITS		$ 94,171

The following is a statement of the losses sustained by Winn-Davis:

Back pay loss through 6/30/87	$135,329
Front pay loss from 7/1/87 through 6/30/90	31,896
Pension Benefit Loss	94,171
Total Losses	$261,396

I hope you will have authority on Friday to deal realistically with the settlement of this matter.

Very truly yours,

/s/ Richard F. Kronz
RICHARD F. KRONZ

MEMO
****

TO : WGF

FROM: RFK

DATE: May 18, 1987

RE : Emily Winn-Davis
Conference at the Office of Human Relations Commission 5/15/87

The following people attended this conference: Byrd Brown, John Gabriel, Jim Mollica, Michael Katz and Richard F. Kronz.

Mr. Mollica took this opportunity to reiterate his analysis of the case and TWA's liability. In a nutshell, Mollica claims that back pay exposure runs, at best, through 1980 when TWA had significant staff reductions system wide. Mollica claims that that is a significant concession from what they believe to be the provable back pay entitlement of about $700.

Mollica continues to assert that there is a functional difference between Sr. Sales Rep. and Account Manager and that when Winn-Davis would not have been qualified and/or promoted to the position of account manager. Mollica also continues to assert that Winn-Davis would have been displaced from her position as Sr. Sales Rep. or Account Manager when TWA underwent the substantial staff reduction in 1980. He suggested that we would not be able to show that Winn-Davis would have survived in Pgh. beyond that staff reduction. Byrd Brown added that we would have to show that she was a superstar of some sort and that she would have prevailed over everybody else in the system, etc. (Byrd Brown suggested that we would have serious difficulty showing any back or front pay entitlement beyond the date of the TWA staff reductions. When I suggested that we weren't required to show that Winn-Davis would have survived in the Pgh. market because we can show by her testimony that she

would have accepted placement in another area as a Sr. Sales Rep. or Account Manager. Byrd Brown said, "But you're going to have a problem dealing with the fact that men and women, both black and white, were being laid off throughout the system". He suggested that it was going to be our burden to show that she would have had sufficient seniority or someone outstanding characteristics that would have compelled them to retain her over other people in the system. Byrd Brown asked Mollica what he had. Mollica said he thought our demand was too high. Byrd Brown said, "I know their demand is too high - what do you have?". Mollica said he had $40,000. Brown asked what we would accept. I told him that we would accept $200,000. He said "What's your claim really?". I said our claim really is $261,000 because we feel that we can support damages as outlined in our most recent letter.

Byrd Brown alluded to Judge Weber's recent decision denying back pay and front pay in a case where age and race or sex discrimination had been shown. There was no question from the way Brown treated this matter that he didn't think that his Commission would ever come down with an award close to $200,000. The matter has been scheduled for hearing on 7/19/87 at 10:00 a.m. That date will only change if there is no one available to hear the case. Mollica will schedule Emily Winn-Davis's deposition for the purpose of dealing with her failure to mitigate damages. Byrd Brown wants to meet with both counsel two weeks before the scheduled hearing date to identify and list exhibits so that the hearing moves quickly.

After the conference, I listened to Mollica for awhile in the hall. (I really didn't say much because it was obviously important to Mollica to say alot for Mr. Katz's benefit.) Mollica again reiterated his argument about the system-wide reductions, Winn-Davis' refusal to move from Pgh. when offered management positions in Cincinnati and New York, etc. He several times suggested that we should make sure that Winn-Davis is realistically looking at her damage entitlement in this case so that she doesn't get some distorted idea of its value.

August 11, 1987

James A. Mollica, Jr., Esq.
MEYER, DARRAGH, BUCKLER,
BEBENEK & ECK
2000 Frick Building
Pittsburgh, Pennsylvania 15219

Dear Mr. Mollica:

Re: Winn-Davis v. TWA

Per your request, I submit the details for the allocation of the cash portion of the subject settlement:

1. Cash portion of settlement $95,000.00

2. Portion of cash settlement allocated to payment of counsel fees and costs:

   (a) Attorney Time - 189.5 hrs. at $125 . $23,687.50

   (b) Attorney Time - 180.8 hrs. at $ 85 . . 15,368.00

   (c) Law Clerk - 273.2 hrs. at $ 25 . . 6,830.00

   (d) Reimbursable Expenses 2,147.00

   Total Due Freeland & Kronz 48,032.50

   Net to Winn-Davis $46,967.50

Per your discussion with Wendell Freeland, I understand that one-half of the net payment to Winn-Davis will be identified as "tort recovery" and the remaining one-half will be identified as wages with appropriate withholdings. The identification number

for Freeland & Kronz is 25-1285282. If additional information is required, please give me a call. I trust you will expedite issuance of the appropriate drafts and the travel credit vouchers so that we can conclude this matter.

Very truly yours,

RICHARD F. KRONZ

GENERAL RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That EMILY E. WINN, residing at 1762 Skyline Dr., Pittsburgh, Pa 15227, Pennsylvania being of lawful age, intending to be legally bound, and for and in consideration of the sum of NINETY-FIVE THOUSAND AND 00/100 DOLLARS ($95,000.00) to her in hand paid (less applicable withholding taxes), and other good and valuable consideration, the receipt of which is hereby acknowledged, on behalf of herself, and on behalf of her heirs, executors, administrators, successors, subrogees and assigns, does hereby remise, release, acquit and forever discharge TRANS WORLD AIRLINES, INC. ("TWA"), its affiliates, successors, assigns, directors, officers, servants, agents and employees, and their respective heirs, executors and administrators, and all persons, corporations and other entities jointly or severally liable with them ("RELEASEES"), of and from any and all actions, causes of action, suits, claims, rights, demands, damages, debts, obligations, costs, loss of services, expenses and/or compensation whatsoever, in law or in equity, known or unknown, which as against the said RELEASEES or anyone claiming through her ever had, now has, or hereafter can, shall, or may have, for, upon or by reason of any matter, cause or thing whatsoever from the date of the beginning of the world to the day of the date of these Presents, including, but not limited to, any and all claims for damages, compensation, injury to personal reputation or character, personal injuries, mental anguish, wages, back pay, interest, attorneys' fees, costs, reinstatement, or equitable, injunctive or declaratory relief for, on account of, or in any way relating to or arising out of EMILY E. WINN'S employment by TWA or the termination thereof, and including, but not limited to, all claims alleged, or which could or may have been alleged, by her in *Winn v. Trans World Airlines, Inc.*, now pending before the Pittsburgh Commission on Human Relations at No. FEB B-262.

It is understood that the settlement amount recited above consisting of NINETY-FIVE THOUSAND AND 00/100 DOLLARS ($95,000.00) shall be paid, allocated and apportioned in the following manner:

1. The sum of $23,483.75, less applicable withholding taxes, shall be paid to EMILY E. WINN as and for back pay or front pay.

2. The sum of $23,483.75 shall be paid to EMILY E. WINN as and for all alleged tort claims or any other claims not represented asserted wage losses.

3. The sum of $63,032.50 shall be paid to Emily E. Winn and FREELAND & KRONZ, her attorneys, as and for attorneys' fees and expenses in connection with the above-recited case, in the form of $48,032.50 in cash and $15,000 worth of "miscellaneous charge orders" ("MCO") which may be utilized by said attorneys or their designees for purchase of air transportation of TWA's system of a total value of $15,000, within one year of the date of issuance to said attorneys by TWA of said MCO's, provided that no such MCO shall be issued hereunder later than August 1, 1991.

EMILY E. WINN shall forthwith dismiss and discontinue or cause to be dismissed and discontinued the above-referenced action, and all other pending proceedings against TWA, if any, whether or not related thereto, all with prejustice and without costs.

It is agreed that the settlement made herein is made in compromise of doubtful and disputed claims, and that nothing herein contained nor the payment to be made as provided for herein is to be construed as an admission by TWA as to any liability whatever to any party in consequence of any of the acts of TWA alleged in the claims or charges recited herein-above, such liability having been expressly denied, and continuing to be expressly denied.

It is further agreed that the execution of this Release is with the full knowledge that it is intended to cover all possible claims, and that the total monetary consideration stated hereinabove is all that EMILY E. WINN and her attorneys and representatives, if any, are ever to receive from TWA for all claims to damages, costs, attorneys' fees and other expenses in the premises, that EMILY E. WINN and her attorneys hereby release, remise, and forever discharge TWA and its respective affiliates, successors, assigns, directors, officers, servants, agents and employees and their heirs, executors and administrators, and all persons, corporations and other entities jointly or severally liable with them, of and from any and all claims which she or her attorneys or anyone claiming through her or her attorneys ever had, now has, or may hereafter have to costs or attorneys' or other fees arising out of their representation of EMILY E. WINN in the above-referenced action, including any attorneys' liens. EMILY E. WINN further agrees that she is not to be considered to have been or to be the "prevailing party" with respect to the charges or claims made in the above-referenced matters within the meaning of any statute, rule or other provision of law which is or may be in any way applicable hereto.

It is hereby declared and warranted that EMILY E. WINN has not assigned or transferred to any person or party, and that to her knowledge no person or party other than she has any right to recovery for, any claim for damage or loss to her as aforesaid. EMILY E. WINN does hereby covenant and agree to indemnify and save harmless TWA against any loss or expense including, but not limited to, costs and attorneys' fees, incurred by reason of any claim, suit, judgment or recovery of any nature whatever by any assignee or transferee known by her to exist in breach of the foregoing declaration and warranty or by any member of her immediate family as to any such damage or loss.

As a further and express consideration for payment of the above-referenced sum, EMILY E. WINN agrees that she waives and releases any claims for her reinstatement as an employee of TWA and that she will not at any time in the future apply for or

seek employment in any capacity with TWA at any of its facilities wheresoever located, and that if she were so to apply for such employment, TWA may reject her application with impunity and without recourse or liability to her of any nature or kind whatsoever.

As a further and express consideration for payment of the above-referenced sum, EMILY E. WINN does hereby declare and promise that the terms and provisions of this settlement shall be kept in utter, absolute and strictest confidence and secrecy, and neither the sum involved in this settlement nor any other such terms and provisions shall be revealed by her, or by her attorneys, to any person or party, other than her accountant, tax consultant, taxing authorities, governmental agencies having jurisdiction or immediate members of her family (including brothers and sisters) without the written permission of TWA. Without such permission, EMILY E. WINN shall be entitled only to reveal that the matter has been concluded without any reference to the manner of conclusion. EMILY E. WINN agrees to inform anyone to whom she so reveals any such terms and conditions that they are considered confidential and to request any such person to make no disclosure thereof to any other person. EMILY E. WINN further agrees that she will not counsel or in any manner assist any other present or former TWA employee in connection with any pending or contemplated administrative or legal proceedings against TWA except as may be required by law. In the event this covenant of confidentiality is breached, it is agreed that the exact amount of damage done to TWA by such breach would be impossible to determine and that the sum of FIFTEEN THOUSAND AND 00/100 DOLLARS ($15,000.00) would be a fair amount of liquidated damage. And further, EMILY E. WINN does hereby agree to pay to TWA the sum of FIFTEEN THOUSAND AND 00/100 DOLLARS ($15,000.00) in the event this covenant of confidentiality is breached and in addition agrees to indemnify and save TWA harmless from all damages, costs and attorneys' fees caused or necessitated by any such breach of this covenant of confidentiality.

EMILY E. WINN acknowledges that this Release constitutes a waiver, satisfaction, discharge and covenant not to sue with respect to future claims as well as all present claims, damages or demands of any kind, known or unknown, by EMILY E. WINN against TWA, including benefits, compensatory damages, liquidated damages, punitive damages, and attorneys' fees, which are based upon or in any way related to the facts and circumstances involved, whether pleaded or not pleaded, in the above-referenced action.

EMILY E. WINN and FREELAND & KRONZ, intending to be legally bound, further acknowledge and understand that taxing agencies may claim that tax payments and similar obligations are owing on account of the settlement memorialized by this Release. EMILY E. WINN and FREELAND & KRONZ covenant and agree that in event any claim for tax payments or similar obligations is made by any taxing agency, then (a) TWA has or shall have no obligation to pay EMILY E. WINN any sum of money in addition to the payment made hereunder; (b) EMILY E. WINN's liability (if any) for taxes and similar obligations in respect of this settlement beyond the amounts to be paid by TWA to taxing agencies on EMILY E. WINN's behalf is for her sole account and of no concern to TWA; (c) EMILY E. WINN will pay such taxes and similar obligations (if any) as may be due beyond the amounts to be paid by TWA on her behalf; and (d) EMILY E. WINN and FREELAND & KRONZ will indemnify and hold TWA harmless from any tax or similar liability beyond the amounts to be paid by TWA on her behalf. It is understood and agreed that in the event the taxes and similar obligations payable on account of this settlement prove to be less than the amount paid by TWA to taxing agencies hereunder, any amount refundable by any taxing agency shall be refundable to EMILY E. WINN and may be retained by her for her sole benefit, TWA having no right to or interest in any such refunded amount.

EMILY E. WINN agrees that she will not file or permit to be filed on her behalf, either individually or as a member of any

class, any claim, grievance, charge, complaint or other process of any nature or kind whatsoever against TWA with any federal, state or municipal court, board, panel, agency, department, organization or other entity concerning any fact, matter, circumstance, statement, event, incident, occurrence, cause or thing whatsoever from the date of the beginning of the world to the date of this Release whether or not based upon or in any way related to the facts and circumstance involved, whether pleaded or not pleaded, in the above-referenced action and EMILY E. WINN acknowledges that this Release extends to, and extinguishes, every such right and claim which might be recognizable before any federal and/or state and/or municipal agency or court.

In the event that any class action suit is commenced which asserts claims against TWA that were the subject of or could have been the subject of the above-mentioned action, and in which EMILY E. WINN is named as a class member, EMILY E. WINN will in no way voluntarily participate in or accept any recovery, remuneration or benefits therefrom. If allowed by law, EMILY E. WINN will opt out of any class action suit upon notification of her inclusion as a potential class member.

EMILY E. WINN does hereby covenant and agree to indemnify and hold harmless TWA, and its respective affiliates, successors, assigns, directors, servants, agents and employees, and their respective heirs, executors and administrators, from and against all claims, damages, debts, obligations, costs, losses and expenses (including, but not limited to, attorneys' fees and litigation expenses) in the event it becomes necessary for TWA to defend any claim or claims released by this Release.

EMILY E. WINN and FREELAND & KRONZ agree to return to TWA all originals and copies of all documents produced to her by TWA or obtained by her from any other sources in connection with or related to the above-referenced action.

It is agreed that this Release shall not be subject to any claim of mistake of fact; that it expresses a full and complete settlement; and that regardless of the adequacy or inadequacy of the amount paid as aforesaid, this Release is intended to avoid further litigation and to be final and complete. In executing this Release, EMILY E. WINN does so with informed knowledge of such rights as she may have as against TWA, and acknowledge that said rights and the consequences of this Release have been fully and completely explained to her by her attorney. In executing this Release, EMILY E. WINN does not rely and has not relied upon any statements or representations made by TWA or any of its officers, directors, agents, servants, employees, attorneys or representatives in regard to this Release or the basis therefor.

This Release contains the entire agreement between EMILY E. WINN and TWA, and terms of this Release are contractual and not merely a recital; there are absolutely no agreements or reservations not clearly expressed herein; and EMILY E. WINN has carefully read this Release, fully understands it, and signs this as her free and voluntarily act and deed.

This Release may not be changed orally.

IN WITNESS WHEREOF, EMILY E. WINN has hereunto affixed her hand and seal on this 11th day of September, 1987.

/s/ Emily E. Winn
EMILY E. WINN

/s/ Freeland & Kronz
Freeland and Kronz
/s/ By Wendell G. Freeland

ACKNOWLEDGEMENT

COMMONWEALTH)
OF PENNSYLVANIA)
) SS:
COUNTY)
OF ALLEGHENY)

On this 11th day of September, 1987 before me personally came EMILY E. WINN, to me known, who, being by me first duly sworn, did depose and say that she executed the foregoing General Release of All Claims for the purposes therein contained.

IN WITNESS WHEREBY, I have hereunto set my hand and seal.

Commission Expires:

CAROL A. KRONZ, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES APRIL 9, 1988
Member Pennsylvania Association of Notaries

/s/ Carol A. Kronz
Notary Public

ACKNOWLEDGEMENT

COMMONWEALTH)
OF PENNSYLVANIA)
) SS:
COUNTY)
OF ALLEGHENY)

On this 11th day of September, 1987 before me personally came WENDELL FREELAND of me known, who, being by me first duly sworn, did depose and say that he executed the foregoing General Release of All Claims for the purposes therein contained.

IN WITNESS WHEREBY, I have hereunto set my hand and seal.

Commission Expires:

CAROL A. KRONZ, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES APRIL 9, 1988
Member Pennsylvania Association of Notaries

/s/ Carol A. Kronz
Notary Public

Freeland & Kronz
Attorneys at Law
1111 Manor Building
564 Forbes Avenue
Pittsburgh, Pennsylvania 15219
(412) 471-5287

Emily Winn-Davis
7442 Schoyer Dr.
Pittsburgh, PA 15218

December 31, 1987
Page 4
Client: 1036
Matter: 1

Matter: Davis vs. TWA
(Cont.)

Date	Professional Services Rendered	Atty	Hours	Amount
10/07/87	Photocopies of case for research	MMH	0.20	17.18

Total Hours: 518.00 Total Services: 68,989.73

Attorney Recap	Hours	Rate	Amount
WGF Wendell G. Freeland	416.20	100.00	54,988.84
WGF Wendell G. Freeland	29.50	125.00	4,871.97
CAM Craig A. McClean	34.30	85.00	3,852.00
MMH Margaret M. Hock	4.50	35.00	208.09
CAM Craig A. McClean	1.50	100.00	198.18
RFK Richard F. Kronz	27.00	125.00	4,459.10
MMH Margaret M. Hock	4.55	65.00	390.74
M-H Miscellaneous Help	0.25	35.00	11.56
LAL Linda Ann Lis	0.20	35.00	9.25

Disbursements

10/05/87	Prothonotary costs	5.00	
	Settle and discontinue.		
	Unbilled costs	672.76	
	Miscellaneous cost advances	2,500.00	
	Photocopying	11.75	
	Total Disbursements		3,189.51

Totals for this matter:

Prior balance:	0.00
Payments	0.00
Current Charges	72,179.24
Transferred from retainer	72,179.24-
Balance due	0.00

case. And I did not make a report to the Court as I did in the other cases that I attended to that day that that was a no asset case.

Q. In reviewing the schedules of assets and liabilities at the creditors meeting, do you recall how much Ms. Davis owed creditors?

A. It was an amount far in excess of the potential settlement figure that they were talking about, but I have that right here today and I probably reviewed that at that time but I don't have independent knowledge. But if you want me to look at the schedules now.

Q. Well, I believe they are a little over $11,000 listed in the schedules?

A. That's correct.

Q. I mean, was there any discussion at the creditors meeting why are you going forward with this bankruptcy when you have a potential recovery of $90,000?

A. The answer that I recall receiving from either Mr. Berman or Ms. Davis was the uncertainty as to the possible recovery and the amount. So with that information I have had past experience in [18] examining debtors where many of them at that time, at trustee hearings, indicate they have potential lawsuits. And that many of them do not turn out to be advantageous and that many of them might wind up settling far within the exemption limitation.

So without knowing what the ultimate recovery would be, there was no further discussion about it since Mr. Berman was not handling that lawsuit against TWA.

Q. It was, in essence, a continual claim at that point in time, and your experience was that often what is claimed is not recovered. Would that be a fair characterization?

A. Correct.

MR. SHORT: Would that be continual or unliquidated?

MR. SIMON: It would be continual and unliquidated.

Q. I may have asked you this in a little different form, but the uncertainty -- when I believe you said they, Ms. Davis and Mr. Berman, referred to the uncertainties, they didn't really go into much detail on what those uncertainties were at

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	EMILY DAVIS, a/k/a EMILY WINN,	Bankruptcy No. 84-2291
	Debtor.	
ROBERT J. TAYLOR, Trustee,		
	Plaintiff,	
	vs.	Adversary No. 88-446
FREELAND & KRONZ, a partnership, WENDELL G. FREELAND, RICHARD F. KRONZ, and EMILY DAVIS		Chapter 7 Judge Markovitz
	Defendants.	

COMBINED PRETRIAL STATEMENT OF THE PARTIES

I. Stipulation of the Parties

The parties to the captioned adversary proceeding stipulate to the following facts:

1. As of October 24, 1984, Emily Davis ("Miss Davis" or the "Debtor") was prosecuting an action against TWA for employment discrimination (the "lawsuit") and was represented by the law firm of Freeland & Kronz under a contingency agreement whereby Freeland and Kronz were to receive, as attorneys fees, forty (40) percent of any fund that was created by settlement or verdict related to the lawsuit.

2. Freeland & Kronz is a partnership for the practice of law with offices at 1111 Manor Complex, Pittsburgh, PA 15219, who from March of 1981 through October of 1987, represented the Debtor in the discrimination action against TWA.

3. Richard F. Kronz, Esq. and Wendall G. Freeland, Esq. are a general partners in the law partnership of Freeland & Kronz.

4. On October 24, 1984, Miss Davis filed a voluntary petition under Chapter 7 of the Bankruptcy Code as Case No. 84-2291.

5. Miss Davis listed the lawsuit on her schedule B-2 as an asset of her bankruptcy estate with an unknown value and listed the proceeds of the TWA lawsuit on her schedule B-4 as exempt property pursuant to Section 522 (d) of the Banruptcy Code. The Debtor filed her schedule of "Assets and Liabilities", including her B-2 and B-4 schedules on October 24, 1984, the date of her bankruptcy petition.

6. On November 26, 1984, Robert J. Taylor, Esq. (the "Trustee") was appointed trustee in the bankruptcy proceeding of Emily Davis.

7. On January 4, 1985, the Trustee conducted a Section 341(a) meeting, which was attended by Miss Davis and her bankruptcy counsel, Alan Berman.

8. Neither the trustee, Robert Taylor nor any other party in interest ever objected to the Debtor's claim of exemptions.

9. On January 7, 1985, the Trustee mailed a letter to Richard F. Kronz and Wendell Freeland, informing them of the bankruptcy filing of Miss Davis, the Trustee's appointment, and that the net proceeds of the lawsuit are an asset of the bankruptcy estate.

10. On January 9, 1985, the Trustee received a letter from John A. Meyer, esq., an associate attorney with Freeland &

Kronz, which responded to the trustee's letter of January 7, 1985.

11. On October 16, 1985, Miss Davis received a discharge.

12. On October 20, 1987, Miss Davis signed a settlement statement approving the distribution of the lawsuit proceeds.

13. At the Section 341(a) meeting, Ms. Davis and her counsel, Alan Berman acknowledged the pending action against TWA.

14. On November 26, 1984, Robert J. Taylor, Esquire, (the "Trustee") was appointed Trustee in the Bankruptcy proceeding of Emily Davis.

15. On or about October 20, 1987, Freeland & Kronz distributed $39,356.75 of the settlement proceeds to the law partnership for its legal fees and reimbursement of costs advanced and distributed $32,159.50 to Ms. Davis.

16. On May 2, 1988, the Trustee sent a letter to Freeland & Kronz requesting an update on the status of the lawsuit.

17. On May 6, 1988, Richard Kronz mailed a letter to the Trustee informing him of the settlement.

18. Ms. Davis's Bankruptcy case has never been closed.

[70] Taylor - Recross

Q. Mr. Taylor, I'm Stanley Levine. I represent Emily Davis.

A. I know you, Mr. Levine.

Q. I just have a couple of questions on the net proceeds –

A. All right.

Q. – language we've been discussing.

A. All right.

Q. Do you know – did you know when the first meeting occurred what the arrangement or agreement regarding fees was as between the Debtor, Ms. Davis, and the law firm of Freeland and Kronz?

A. No, I did not.

Q. So, you weren't sure at that time whether it was contingency fee agreement or an hourly rate agreement?

A. Yeah. I knew none of that information.

Q. Was there ever any attempt made by you or through you to have the firm engaged as counsel to the Debtor with respect to the further prosecution of the lawsuit after the filing of the bankruptcy?

A. I didn't make any independent effort in that regard because I didn't know whether there was going to be any type of a settlement.

MR. LEVINE: I have no further questions.

THE COURT: Let me clear it up so that I can understand it, too.

[71] Taylor - Examination by Court

THE WITNESS: Surely.

EXAMINATION BY THE COURT:

Q. Your understanding of net proceeds. The gross sum would be paid in settlement, deducted therefrom would be attorney's fees and costs, and the balance would be administered in this estate. Is that what you had – is that what you meant by

A. Well, that was the general gist of my letter, yes.

Q. Now, with reference to the 341 meeting, you made notations. And the thought crossed your mind to object to exemptions, but you decided not to because you didn't know – I think the word you used, the lawsuit might be a nullity.

A. That's correct.

Q. So that you thought about objecting to exemptions, determined not to because this lawsuit might be a nullity. What do you mean by a nullity?

A. That there would be no recovery.

Q. The thought also crossed your mind that the sum recovered would be small enough so as to fit into the exemptions, did it not?

A. Yes, Your Honor.

Q. And you determined not to object – not to require that those sums come into the estate and thereafter be distributed by the Trustee?

* * * *

Human Relations Commission Office held May 15th, 1987, is it not?

A. Correct.

Q. And the second paragraph indicates a change in TWA's position occurred at or within that meeting, was it not?

A. Yes.

Q. Okay. They appear to have conceded that Ms. Davis might be entitled to damages more than 700 and they specifically said that back pay exposure may run through 1980, is that correct?

A. Yes. I don't know that in saying that he was conceding that there was any further back pay, you know, any increase in the back pay component.

Q. Now, that memo about halfway down in the last paragraph on the first page, I believe there's a parenthesis, and it states, Byrd Brown suggested he would have serious difficulty showing any back or front pay entitlement beyond the date of TWA's staff reduction?

A. Yeah. And that was my great concern. That Byrd Brown was accepting that Emily Win-Davis would not have survived in the TWA organization beyond the date of those staff reductions. And if the Commission accepted that, then we were dead in the water.

Q. And those staff reductions were in 1980, is that correct?

[170]

A. Yes. That's when they started, and they continued for some years after that to the point that I don't even think TWA has a presence in Pittsburgh now.

Q. Okay. And after some further explanation about Byrd Brown's position, you have some quotes in there. Byrd Brown said, quote, I know their demand is too high - what do you have? End quote. Mollica said he had $40,000. Is that your recollection of what happened in that May meeting?

A. That's exactly what I recollected, and I dictated this memo after returning because I thought we had made significant

progress, and I wanted Mr. Freeland to know what that progress was and what my concerns were about where we were going from there.

Q. On the second page of that memorandum there's mention of Byrd Brown alluding to recent decision by Judge Weber (phonetic) as far as front pay and back pay components of the -- of a lawsuit, is there not?

A. Um hum.

Q. In fact, he had denied both back pay and front pay?

A. Yes.

Q. Do you recall what significance Mr. Brown -- why that was brought up at this meeting or what was the intent of him doing that? Do you want to explain anything more about that?

A. Well, the purpose of it was so that I would be aware that the fact that we may go before the Commission and establish

* * * *

get authority to pay over $100,000, in a case like this, or would never give authority to pay.

Q. Okay. And I'll refer your attention to the -- after the numbers on the page the next paragraph that begins, per your discussion with Wendell Freeland, I understand that one-half of the net payment to Win-Davis will be identified as tort -- quote, tort recovery, end quote. We've gone into it before today. Is it fair to say that that characterization of tort recovery was an attempt to deal with the tax --

MR. SHORT: Objection. He's leading the witness on this question. It's his own witness.

THE COURT: Sustained.

MR. SIMON: Okay. Let me rephrase the question.

BY MR. SIMON:

Q. Referring your attention to the same quoted section, why was it necessary to write to Mr. Mollica to say that something shall be identified as the tort recovery?

A. Well, the components of the recovery were important, and how it was characterized was important because of the tax consequences to Emily Win-Davis. That part of the recovery that was to be characterized as wages would be fully taxable to her and because it was a discrimination lawsuit, it is appropriate in those cases for part of any recovery or settlement to be identified as a tort recovery for the tortuous act committed, the discriminatory act committed against her, [174] which is nontaxable as income to Emily Win-Davis.

Q. Had a month prior to this there been any discussion regarding a tort recovery?

A. I would say, yes. In my discussions with Mollica, I always insisted that -- I always considered that part of the recovery had to be tort recovery.

Q. When do you first recall it being raised in the negotiations, the idea of characterizing a portion of it as, quote, tort recovery?

A. I'm sure it would have been after the conference that I attended in May when for the first time some real dollars were considered.

Q. Now, I'll turn your attention to Defendant Exhibit K which is your letter to Mr. Taylor dated May 6, 1988. I believe it's been discussed.

A. Yes.

Q. Now, I really want you to refer to the second page, the enclosure, with that letter.

A. Yes.

Q. And that is essentially a statement of the distribution of the proceeds pretty much for the client's benefit, would that be fair?

A. Yes.

Q. And running down that a moment, in the second group of numbers starting with costs advanced, 356, the third entry

* * * *

[10] trustee's failure to object to an exemption removes the asset from the estate when the debtor did not properly disclose all information required to describe the property interest intended to be exempted. A debtor should be encouraged to complete his schedules accurately.

Section 522(d)(11)(E) provides as follows:

> (11) The debtor's right to receive, or property that is traceable to –
>
> > (E) The payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor.

When Miss Davis commenced her bankruptcy proceeding, she did not have a right to receive nor had property that is traceable to "a payment in compensation of loss of future earnings. . ." All she had was a cause of action for back wages through October 24, 1984. Any lost wages that occurred after October 24 would not be property of the Debtor's estate. As of the commencement of the Debtor's case, the lawsuit was a claim for back wages, not loss of future earnings. Therefore, sub-section 11(E) is not relevant to this dispute. The Trustee believes that the cause of action for back wages through October 24, 1984 is property of the Debtor's estate. The Trustee concedes that, to the extent that the cause of action is for future wages which would have been paid to Miss Davis after October 24, 1984, it is not property of the estate, because the cause of action for those wages accrued post-petition.

Miss Davis failed to exercise her duty to complete properly Schedule

* * * *

[17] 1987 through June 1, 1990 in the amount of $31,896. The Trustee believes that it is reasonable to infer from the testimony of Attorneys Freeland, Kronz, and Meyer, that the settlement includes approximately one and one-half years of front pay, in the amount of $15,948. The Trustee also believes that is clear from the testimony of Attorneys Freeland, Kronz, and Meyer that no recovery was obtained for pension losses. Therefore, a fair characterization of the basis for the settlement payment in light of the evidence is that the $110,000 was paid in settlement of a claim of $151,277, which is comprised of back pay claim of $135,329 and a front pay claim of $15,948. Because the claim was not paid in full, it is necessary to prorate the total claim of $151,277 between front pay and back pay in relation to the $110,000 settlement. $135,329 represents 89.46% of a claim of $151,277. The front pay claim of $15,948 represents 10.54% of the total claim of $151,277. If these percentages are applied to the $110,000 settlement, $98,406 represents the settlement portion to be allocated to back pay and $11,594 represents the amount to be allocated to front pay.

However, back pay through July 1, 1987 is not the same as back pay due on October 24, 1984, when the Debtor commenced her bankruptcy proceeding. The Trustee agrees that the portion of the back pay component which is for wage losses occurring after the commencement of the Debtor's case is not property of the estate. Therefore, it is appropriate to allocate the $98,406 back pay portion of the settlement between the pre-bankruptcy back pay claim of $92,612 and the post-bankruptcy back pay claim of $42,716. The pre-bankruptcy portion of $92,612 represents

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IN THE SUPREME COURT
OF THE UNITED STATES

[Title Omitted in Printing]

Order Granting Petition for Writ of Certiorari entered 27 November 1991.